



**Bigima Housing Company Ltd & another v Mwangi & 2 others; Wachira & 2 others (Interested Parties) (All Suing on their own behalf and on behalf of Amani Riverside Estate Association) (Environment & Land Case E027 of 2022) [2023] KEELC 16874 (KLR) (19 April 2023) (Ruling)**

Neutral citation: [2023] KEELC 16874 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE E027 OF 2022  
CA OCHIENG, J  
APRIL 19, 2023**

**BETWEEN**

**BIGIMA HOUSING COMPANY LTD ..... 1<sup>ST</sup> PLAINTIFF**

**BIGMAH ESTATES LIMITED ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**JOHN MIGWI MWANGI ..... 1<sup>ST</sup> DEFENDANT**

**CHAIRMAN LANDS CONTROL BOARD MAVOKO ..... 2<sup>ND</sup> DEFENDANT**

**LAND REGISTRAR MACHAKOS ..... 3<sup>RD</sup> DEFENDANT**

**AND**

**DOUGLAS WACHIRA ..... INTERESTED PARTY**

**AMBROSE O. OWALE ..... INTERESTED PARTY**

**ABDINOOR MOHAMMED ..... INTERESTED PARTY**

**ALL SUIING ON THEIR OWN BEHALF AND ON BEHALF OF AMANI  
RIVERSIDE ESTATE ASSOCIATION**

**RULING**

1. What is before Court for determination is the Applicants' Chamber Summons Application dated the October 26, 2022 where they seek the following orders:-
  1. That the Honourable Court be pleased to enjoin Douglas Wachira and Ambrose O. Owale and Abdinoor Mohammed as representatives of 400 residents of Mavoko Town Block 3/1924 (Commonly known as Lukenya Block 464) Amani Riverside Estate Association residents as Interested Parties in this suit



2. Costs of this Application be in the cause.
2. The Application is premised on the grounds on the face of it and the Supporting Affidavit of Douglas Wachira, the 1<sup>st</sup> Interested Party herein who states that he represents about 400 members in Mavoko Town Block 3/1924 (Lukenya Block/464), hereinafter the “Suit Property”. He deposes that they purchased their respective plots from the Plaintiffs and they were issued with share certificates including receipts for the same. He avers that the properties were subdivided and beacons placed thereon. Further, they took possession and constructed thereon. He explains that they had engaged a surveyor to process their titles but understands that the Plaintiffs have opposed the process for reasons they do not understand. He contends that the implication of the orders that the Plaintiffs are seeking will directly impact on them and the Application should hence be allowed.
3. The Plaintiffs opposed the instant Application by filing a Replying Affidavit sworn by its Director George Gitau Gathimba, where he deposes that even though he was not opposed to the joinder of the Applicants, he disputed the purported Share Certificates and insists they were a creature of the 1<sup>st</sup> Defendant as they were not signed by him. He explains that the 1<sup>st</sup> Defendant sold off portions of land left in every parcel to cater for future occurrences and has also created extra plots on road reserves. Further, that he has been signing the documents alone without his input. He contends that he was not in agreement with the process being used by the 1<sup>st</sup> Defendant as he was using new maps that he had redone, and he was unable to handle issues coming to his office when he was not involved from the beginning.
4. The Defendants did not oppose the Application for joinder of the Interested Parties.

#### **Analysis and Determination**

5. Upon consideration of the instant Chamber Summons Application including the respective Affidavits, annexures and rivalling submissions, the only issue for determination is whether the Applicants should be joined in these proceedings as Interested Parties.
6. In respect to joinder of an Interested Party, Order 1 Rule 10(2) of the *Civil Procedure Rules* stipulates *inter alia*:
  - (2) The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”
7. While *Black’s Law Dictionary*, 10th Edition, defines an ‘Interested Party’ as “A party who has a recognizable stake (and therefore standing) in a matter.”
8. The Court in the case of *Trusted Society of Human Rights Alliance V Mumo Matemu & 5 Others* (2015) eKLR defined an Interested Party as follows:
  - (An) Interested Party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause.”



9. Similarly, in the case of *Civicon Limited vs. Kivuwatt Limited and 2 Others* [2015] eKLR the court observed as follows:

Again the power given under the Rules is discretionary which discretion must be exercised judicially. The objective of these Rules is to bring on record all the persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence at the time without any protraction, inconvenience and to avoid multiplicity of proceedings. Thus, any party reasonably affected by the pending litigation is a necessary and proper party, and should be enjoined...from the foregoing, it may be concluded that being a discretionary order, the court may allow the joinder of a party as a defendant in a suit based on the general principles set out in Order I Rule 10(2) bearing in mind the unique circumstances of each case with regard to the necessity of the party in the determination of the subject matter of the suit, any direct prejudice likely to be suffered by the party and the practicability of the execution of the order sought in the suit, in the event that the plaintiff should succeed. We may add that all that a party needs to do is to demonstrate sufficient interest in the suit; and the interest need not be the kind that must succeed at the end of the trial.”

10. See also the decision of *David Kiptugen v Commissioner of Lands, Nairobi & 4 others* [2016] eKLR.
11. In this instance, the Interested Parties who are about four hundred (400) members in the suit property claim to have purchased their respective plots from the Plaintiffs and that they were issued with share certificates including receipts for the same. They contend that the said property was subdivided, beacons placed and they took possession as well as constructed thereon but are yet to receive their titles. The Plaintiffs did not oppose the joinder of the parties herein but disputed the Share Certificates.
12. On perusal of the Plaint, I note that the Plaintiffs are seeking several orders including injunctive orders against the Defendants over several land parcels, including the land currently occupied by the Applicants herein. The fact that they are in actual possession of the land and were seeking the services of a surveyor with a view to register the land in their respective names has not been contested.
13. Based on the facts before me while relying on the legal provisions I have quoted as well as associating myself with the decisions cited above which have defined an Interested Party and enumerated the principles for joinder of an Interested Party, I find that the Applicants herein indeed meet the criteria for joinder as they are in occupation of the suit property which they allege to have purchased from the Plaintiffs. I opine that the Applicants’ involvement in these proceedings is necessary to enable the court effectually and completely adjudicate upon as well as settle all questions involved in the dispute herein. Further, they will be affected by any decision from this suit.
14. In the circumstance, I find that the Chamber Summons Application dated the October 26, 2022 merited and will allow it. Costs will be in the cause.
15. I direct the Interested Parties to file and serve their respective pleadings within twenty one (21) days from the date hereof.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 19<sup>TH</sup> DAY OF APRIL, 2023**

**CHRISTINE OCHIENG**

**JUDGE**

